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**LABOUR & E. S. I. DEPARTMENT**

NOTIFICATION

The 25th November 2014

No. 9661—IR -(ID)-157/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th November 2014 in Industrial Dispute Case No. 35/2013 of the Presiding Officer,Industrial Tribunal, Bhubaneswar where in the industrial dispute between the management of Managing Director and others, M/s Consolidated Construction Consortium Ltd., Mylpore, Chennai-600004 and its workman Shri Manoranjan Jena was filed by the workman under Section 2-A(2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 35 OF 2013 [u/s 2-A(2)]
Dated the 5th November 2014

*Present* :

Shri B. C. Rath, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

*Between* :

The management of
The Managing Director,
and Others,
M/s Consolidated Construction
Consortium Ltd.,
5, 2nd Link Street, C.I.T. Colony,
Mylpore, Chennai-600004. . . First Party—Management

*And*

Its Workman,
Shri Manoranjan Jena,
S/o Late Natabar Jena,
At/P.O. Singhpur,
P.S. Binjharpur,
Dist. Jajpur, Odisha. . . Second Party—Workman

*Appearances* :

| | | |
|---|---|---|
| Shri R. N. Rath, Auth. Rept. | . . | For the First Party—Management |
| Shri S. K. Das, Advocate | . . | For the Second Party—Workman |

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, the 'Act') filed by the second party workman challenging his termination from service with effect from the 5th December 2012 and praying therein for his reinstatement in service with full back wages and all other consequential service benefits.

2. It is stated in the application that while being posted and discharging his duty ot Mangalore the service of the second party workman was terminated on the allegation of unauthorised absence from duty and the said matter was communicated to him through e-mail while he was in his native place at Jajpur. Narrating detailly about his employment it is stated in the claim statement that the second party was initially appointed as a level T-2 worker and posted/engaged in the All India Institute of Medical Science (AIIMS), Sizua, Bhubaneswar with effect from the 12th August 2010. Subsequently he was transferred to Pune and thereafter to Bangalore Region in the month of September 2012. When he arrive at Bangalore he received his order of transfer from Bangalore to Mangalore. The second party workman suffered from Malaria fever at Mangalore when he was discharging his duty. Hence he could not attend his duty on 5-1-2012 as he could not recover from Malaria fever and was advised rest, he returned to his native village giving intimation to his authority by e-mail. During his stay at Jajpur he was affected by Rheumatic Arthritis and medically advised to take rest for three weeks. Such development was also communicated to his authority. According to the second party workman, when he was recouping from his illness he received two letters dated 12-12-2012 and 20-12-2012 by e-mail in which he was informed about termination of his service by way of striking of his name from the Muster Roll due to unauthorised absence. On receipt of such letters the second party workman sent a mail along with all medical papers to his authority and made a prayer for his reinstatement. When no information was received he put forth his grievance before the District Labour Officer, Jajpur. As no action was taken on his grievance petition he has come up with the present application raising a dispute resorting to the provisions of Section 2-A(2) of the Act with a prayer for his reinstatement in service with all back wages and consequential service benefits on a contention that termination of his service is illegal, unjustified and arbitrary as well as in gross violation of the principles of natural justice and the same was not in comformity with the statutory provisions of the Act.

3. The first party management on receipt of the notice and the claim statement has contested the cliam of the second party workman denying the allegations made against it and taking a stand that this Tribunal is lacking jurisdiction to adjudicate the dispute in view of the fact that the first party management undertakes work of construction of hospital of the AIIMS at Sizua, Bhubaneswar after obtaining licence from the Central Government Labour Machinery. The construction work is being taken by the first party management in an Institution like the AIIMS which is under the control of the Ministry of Health & Family Welfare of the Government of India and as such the State Government Labour Machinery is not the appropriate authority to take any initiative for conciliation of the matter or to refer the same for adjudication to a State Labour Court or Industrial Tribunal. Therefore this

Tribunal has no jurisdiction to entertain the application of the second party workman. Further, the territorial jurisdication of this Tribunal has also been challenged on a plea that the cause of action having been arisen out of the termination of service of the second party workman at Mangalore, the Industrial Tribunal or the Labour Court having territorial jurisdication over Mangalore in the State of Karnataka is the appropriate forum to look into the grievance of the second party workman.

4. In the event of the first party managements insistence and filling of a petition to take up hearing on the preliminary issue on jurisdiction at the first instance, it is felt necessary to give a finding on the maintainability of the application in this Tribunal before proceeding with the hearing on other issues raised by the parties.

5. The petition for hearing on such preliminary issue has been resisted vehemently by the second party workman on a plea and contention that the Industrial Tribunal is required to decide all issues in dispute at the same time without trying some of them as preliminary issue in view of the principles and observations propounded by the Hon'ble Apex Court in the case of D.P. Maheswari *Vrs.* Delhi Administration, reported in 1983(47) FLR-477. Further, relying upon the decisions reported in MANU-OR-0075-1979 of the Orissa High Court (Howrah Motors Co. Ltd. *Vrs.* Labour Court and others); (1956) ILLJ 557 of the Bombay High Court (Lalbhai Tricumlal Mills Ltd., *Vrs.* Vin D.M. and others); 2006-LLR- 905 of the Delhi High Court (Lohia Starlinger Limited and Another *Vrs.* Government of Nct of Delhi and others); AIR 1967 SC 1040 [Workmen of Shri Rangavilas Motors (P) Ltd. and another *Vrs.* Shri Rangavilas Motors (P) Ltd. and others] and AIR 1967 MP 114 of the Madhya Pradesh High Court (Association of Medical.....*Vrs.* The Industrial Tribunal and others) contention has been raised that the second party workman having been given appointment and posted first at Bhubaneswar by the first party management and termination of his service being communicated to him in his native address, i.e. Jajpur and the workman being a resident under the jurisdiction of this Tribunal, the dispute can be adjudicated by this Tribunal. According to the learned counsel for the second party workman, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well know tests of jurisdiction, a Court or a Tribunal would have jurisdiction if the parties reside within the jurisdiction or the subject matter of the dispute substantially arises within its jurisdiction. According to him, the termination of service of the second party workman having been communicated to him during his stay at Jajpur and the second party workman having his residence within the jurisdiction of the Tribunal, the preliminary objection raised by the first party management is devoid of any merit.

6. The undisputed facts as emerging from the pleadings and contentions of the parties are that the first party management is a construction company having its registered office at Chennai and work sites at different places of India. Further it is revealed from the appointment letter of the second party workman that his service was transferable to the work sites of the first party management situated in different places of India and also to abroad. The second party workman was given appointment and posted in the AIIMS at Sizua, Bhubaneswar, then he was transferred to Pune and subsequently to Bangalore and thereafter to Mangalore. His service seems to have been terminated on account of his absence from duty at Mangalore and intimation regarding such

termination was communiciated to him by e-mail while he was in his native place at Jajpur. There is no serious dispute to the fact and pleading advanced by the first party management that the work site of the management, i.e. AIIMS, when the second party workman was given appointment first, was under the control of the Ministry of Health & Family Welfare of the Government of India.

7. The first limb of contention of the learned counsel for the management in challenging the maintainability of the application is that the Central Labour Machinery is the appropriate authority to address the grievance, if any, of the second party workman and be that as it may, the Central Government Industrial Tribunal and not the State Tribunal is the appropriate forum to adjudicate the claim of the second party workman. There is no serious dispute to the fact that in view of Section 2(a) (i) of the Act in relation to any industrial dispute concerning an industrial undertaking or establishment enumerated in the above clause, the Central Government is the appropriate Government . In respect to any industry carried on by or under the authority of the Central Government, the Central Government is the approriate Government as defind under Section 2(a) (i) of the Act. The industries under the categories mentioned in sub-clause(i) can be presumed to be an industry carried on by or under the authority of the Central Government and disputes relating to all other industries, the appropriate Government would the State Government in view of the provisions enumerated in sub-clause(ii) of Section 2(a) of the Act. There is also no serious dispute to the fact that the first party management is a private organisation. The fact that it is undertaking construction work of a Central Government Institution does not make it an industry carried on by or under the authority of the Central Government even though it is accepted for argument sake that it has obtained a licence from the Central Government to carry out its business. There is nothing on record that the first party management is being managed by the servants or agents of the Central Government or the same is functioning pursuant to the authority of the Central Government or being an agent or servant of the Central Government. As per the settled principle no business owned or carried on by a private person or a limited company can be a business carried on by or under the authority of the Government. The industries which are carried on by incorporated commercial corporations, which are governed by their own Constitution, for their own purpose, cannot be declared as carried on by or under the authority of the Central Government as these corporations are independent legal entities and run the industries for their own purposes. In that view of the matter the 'appropriate Government' to refer the dispute in the matter of the first party management is not the Central Government and therefore, the contention raised by the first party management that the Central Government Industrial Tribunal is the appropriate forum to adjudicate the claim of the second party workman has no force.

8. Coming to the second limb of contention of the first party management, i.e. about the territorial jurisdiction of the Tribunal to adjudicate the matter, it is apparent that the work site of the first party management is not confined to the territory of a State. Though the second party workman was given appointment and posted for the first time at Bhubaneswar, he was transferred to different places before termination of his service was communicated to him in his native place while he was posted at Mangalore. There is also no serious dispute to the fact that the second party workman was working in the office of the management at Mangalore when his service was

terminated. Admittedly, the Act is silent about the the jurisdiction of a Tribunal when an employer has establishemets in more than one State. The Act does not contemplate a joint reference by more than one State in view of an employer having establishments in more than one State. The Act does not deal with the 'cause of action' nor does it indicate as to what factors will confer jurisdiction on the 'appropriate Government' for making a reference in the case of an employer having establishments in more than one State.

9. Relying upon the decision in the case of Howrah Motor Co. Ltd. (supra) it has been strenuously contended on behalf of the second party workman that when the Act does not deal with the causes of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court the well known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within the jurisdiction or if the subject matter of the dispute substantially arises within the jurisdiction is applicable. According to him, Jajpur being the place of residence of the second party workman and the termination order being communicated to him in his Jajpur address and the subject matter of dispute appears to have been arisen within the jurisdiction of this Tribunal, the preliminary objection raised by the first party management has no force. It is forcefully submitted that the Act being silent on the issue of territorial jurisdiction the general principle underlying jurisdiction of a Civil Court would be applicable. To strengthen his argument reliance has also been placed on the decisions referred to above in Para. 5.

10. Refuting the contentions of the second party workman, the learned representative appearing for the management submitted that jurisdiction of the Tribunal is to be determined not only on the basis of situs of employment but also on the inter-connected questions relating to cause of action. The concept of cause of action under the Constitution, Civil Procedure Code and Industrial Disputes Act are distinguishable. Under the industrial Disputes Act, 'cause of action' will have to be related to either to theory of "contract" or therory relating to "situs of employment". Despite the fact that the notice of termination of service being communicated to the workman by E-mail while he was at Jajpur, the place of his employment was at Mangalore and the office at Mangalore had control over him. Hence, the dispute ought to have been raised in Mangalore or before the Tribunal having jurisdiction over the same. In support of his argument reliance has been placed on the pronouncement of the Calcutta High Court in the case of Indian Express Newspaper (Bombay) (Pvt.) Ltd. and others *Vrs.* State of West Bengal and others, reported in 2005 LLR 595.

11. In the case of workman of Shri Rangavilas Motors (P) Ltd. and another (supra) the Hon'ble Apex Court has observed as follows :—

> "xx xx In our view the High Court was right in holding that the proper question to raise is : where did the dispute arise ? Ordinarily, if there is a separate establishment and the workman is working in that clearly be some nexus between the dispute and the territory of the State and not necessarily between the territory of the State and the industry concerning which the dispute arose." This Court in Indian Cable Co. Ltd. *Vrs.* Its workmen MANU/SC/0297/1962 : (1962) S.C.R. 589 held as follows :
>
> "The Act contained no provisions bearing on this question which must,consequently, be decided on the principles governing the jursdiction of Courts to entertain actions or proceedings. Dealing with a similar question under the provisions of the Bombay Industrial Relations Act, 1946, Chagla, C,J, observed in Lalbhai Tricumlal Mills Ltd. *V.* Vin and others (1956) I.LL.J. 557 :

'But what we are concerned with to decide is : where did the dispute substantially arise ? Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-known tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jurisdiction or if the subjectmatter of the dispute substantially arises within jurisdiction.'

In our opinion, those principles are applicable for deciding which of the States has jurisdiction to make a reference under Section 10 of the Act."

In the case of Lalbhai Tricumlal Mills Ltd. (supra), the Hon'ble Bombay High Court has observed as follows :

"Now, the Act does not deal with the cause of action, nor does it indicate what factors will confer jurisdiction upon the Labour Court. But applying the well-know tests of jurisdiction, a Court or Tribunal would have jurisdiction if the parties reside within jursdiction or if the subject matter of the dispute substantially arises within jurisdiction. And therefore the correct approach to this question is to ask ourselves—where did this dispute substantially arise—and in our opinion the only answer to that question can be that the dispute substantially arose in Bombay and not in Ahmedabad. What is the dispute ? The dispute is not as to whether the employee approached the employer in Ahmedabad and no agreement was arrived at. The dispute is whether the employer was justified in dismissing the employee, and in as much as the employment was in Bombay, and the dismissal was in Bombay, it is difficult to understand how it can possibly be urged that the dispute did not substantially arise in Bombay. What Mr. Bhagwati says is that there is no dispute till an approach is made by the employee under the proviso to S.42(4)."

In the case of Lohia Starlinger Limited and Another and in workmen of Shri Rangavilas Motors(P) Ltd. and another (supra) situations are similar to the present one, and the Hon'ble Courts have observed that the position under the Industrial Disputes Act is a little different and the cause of action will have to be related to either the theroy of 'control' or the theory relating to 'situs of employment'. In the case of (3) (supra) the Hon'ble High Court of Maddhya Pradesh relying on the above two tests have held that the State of Maharastra and not the State of Bengal was the appropriate Government before whom the Petitioner 'workman' should have raised the dispute with regard to his termination of service since the situs of employment of the Petitioner was Bombay.

12. Thus, if the settled principles of the Apex Court and different Hon'ble High Courts set out in the decisions referred to above are taken into consideration it is seen that the place of residence of the parties has nothing to do with the jurisdiction of a Labour Court or Industrial Tribunal to entertain a dispute. Further more in the case at hand the termination of service of the second party workman was made at Mangalore and therefore, the subject matter of dispute substantially arose within the territorial jurisdiction of the Labour Court or Industrial Tribunal having jurisdiction over Mangalore. The facts and circumstances of the case reported in Howrah Motor Co. Ltd (supra) is not indentical with the facts and circumstances of the present one, in as much as in the said case the workman did not join in his new place of posting, i.e. Calcutta and he challenged his termination order along with the order of his transfer from Cuttack to Calcutta. In the case at hand the workman had joined Mangalore after suffering to other transfers and as such findings the Hon'ble High Court

is no way helpful to the second party workman. As it emerges from the principles settled by the Hon'ble Apex Court as well as Hon'ble High Courts in the cases under reference that situs of employment of the workman would determine the territorial jurisdiction of the Tribunal in case of any industral dispute arising from termination of service of a workman. As per the said principle the place where the impunged order operates on the service of a workman is the place where the cause of action arises and the State in which that place is situated will be the appropriate Government for making the reference of an industrial dispute arising out of the impugned order of dismissal. Coming to the case at hand, the impunged order of termination operates on the workman at Mangalore and not at Jajpur. Therefore, the place of cause of action of the second party workman arises at Mangalore and the place having been situated in the State of Karnataka, the Government of Karnataka would be the appropriate Government for making the reference of an industrial dispute arising out of such dismissal. Be that as it may, the Industrial Tribunal or Labour Court having jurisdiction to receive the same from the Government of Karnataka would be the appropriate Forum to entertain such a dispute. In that view of the matter, the Labour Court or the Industrial Tribunal having jurisdiction over Mangalore seems to be the appropriate forum to entertain the application under Section 2-A(2) of the Act to resolve the dispute between the parties.

12. For the reasons and discussions made above, I am constrained to hold that the first party management has substantial ground to raise the preliminary objection on the point of jursdiction of this Tribunal to entertain the dispute raised by the second party workman under Section 2-A(2) of the Act and accordingly the present application filed under Section 2-A(2) of the Act is held to be not maintainable. However, the second party workman is at liberty to raise the dispute before the forum having jurisdiction to adjudicate the matter.

With the finding as above the case of the second party workman is disposed of.

Dictated and corrected by me.

B. C. RATH
5-11-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

B. C. RATH
5-11-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government

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